Jennifer J. Johnston (State Bar No.: 125737) Richard A. Lazenby (State Bar No.: 202105) CONDON & FORSYTH LLP 1901 Avenue of the Stars, Suite 850 2 Los Angeles, California 90067-6010 Telephone: (310) 557-2030 Facsimile: (310) 557-1299 3 4 Attorneys for Defendant NORTHWEST AIRLINES, INC. 5 6 7 UNITED STATES DISTRICT COURT 8 NORTHERN DISTRICT OF CALIFORNIA 9 10 IN RE: DEEP VEIN THROMBOSIS Case No. MDL No. 04-1606 VRW 11 LITIGATION STIPULATION AND [TROPOSED] 12 ORDER FOR JUDGMENT This Document Relates to: 13 Kamil Matyska v. KLM Royal Dutch 14 Airlines, Case No. C03-4102 VRW 15 16 17 Pursuant to Local Rules 7-11 and 7-12, defendant Northwest Airlines, Inc. 18 ("Northwest"), by and through its attorneys, Condon & Forsyth LLP, and plaintiff 19 20 Kamil Matyska, by and through his attorneys, O'Reilly & Danko, hereby stipulate 21 as follows: 22 Plaintiff's complaint alleges a claim for relief against Northwest for 1. treaty liability arising under the provisions of the Convention for the Unification of 23 24 Certain Rules Relating to International Carriage, 49 U.S.C. § 1502, et seq. ("Warsaw Convention"). Plaintiff alleges that Northwest's alleged failure to warn 25 of the risks of DVT constituted an "accident" under the Warsaw Convention. 26 On September 30, 2005, certain air carrier defendants filed their 27 2. 28 motions for summary judgment on the issue of whether a failure to warn can

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constitute an accident under Article 17 of the Warsaw Convention.

- 3. On August 18, 2006, this Court granted defendants' motions for summary judgment. The bases for the Court's decision are set forth in the Court's Amended Order filed on August 21, 2006.
- 4. Defendant Northwest did not file a motion for summary judgment in the above captioned action, because claims against Northwest were subject to the automatic stay provisions of 11 U.S.C. § 362. Since the filing of the motions, plaintiff Kamil Matyska obtained relief from the automatic stay. (See Stipulation to Lift Automatic Stay filed on August 29, 2006, MDL 04-1606, docket no. 473).
- 5. Plaintiffs in other actions against Northwest also have obtained relief from the automatic stay. Where relief from the automatic stay provisions has been obtained in the cases governed by the Warsaw Convention, this Court has entered judgment in favor of Northwest for the reasons set forth in the Court's Amended Order filed on August 21, 2006. (See Order filed on September 21, 2006, MDL 04-1606, docket no. 510.)
- 6. Northwest and plaintiff Kamil Matyska agree that the issue(s) of law presented in the previously filed air carrier defendants' motions for summary are identical to the issues against Northwest in this action.
- 7. Northwest and plaintiff Kamil Matyska agree that the same reasoning and findings in this Court's Amended Order, filed on August 21, 2006, will control the disposition of this action as to Northwest.
- 8. Northwest and plaintiff Kamil Matyska agree to be bound by this Court's Amended Order filed on August 21, 2006, granting summary judgment in favor of the air carrier defendants. Northwest and plaintiff Kamil Matyska further agree to be bound by any final decision of the Ninth Circuit Court of Appeals and the United States Supreme Court, from any appeal from this Court's Amended Order filed on August 21, 2006.

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9. Northwest and plaintiff Kamil Matyska agree that this Stipulation does not limit or waive any appellate rights any party possesses.

IT IS SO STIPULATED.

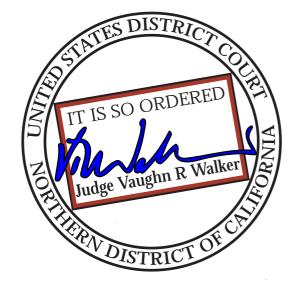
Dated: January  $\frac{5}{2}$ , 2007

O'REILLY & DANKO

MICHAEL S. DANKO STEPHEN J. PURTILL KRISTINE K. MEREDITH Attorneys for Plaintiff KAMIL MATYSKA

Dated: January 2, 2007

CONDON & FORSYTH LLP



JENNIFER J. JOHNSTON
RICHARD A. LAZENBY
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NORTHWEST AIRLINES, INC.